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# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-191003

DATE: January 9, 1979

MATTER OF: The Department of the Army,  
[Request for Modification of  
GAO Recommendation]

## DIGEST:

Contract for lease with option to purchase dictating and transcribing equipment was not made to low offeror and solicitation contained significant defects. Recommendation that contract be terminated for convenience is affirmed where record suggests that installation of new system after resolicitation will result only in minor, short-term administrative inconvenience to using activity and proper method to determine least cost to Government is competition. Even though implementation of recommendation may result in some adverse effects and increased costs, it is necessary to preserve integrity of competitive procurement system.

The Department of the Army (Army) requests modification of our recommendation set forth in the matter of National Office Equipment Company, B-191003, June 6, 1978, 78-1 CPD 413.

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The pertinent facts in that case follow. The United States Army Training Center and Fort Dix issued a request for quotations (RFQ) soliciting offers on a brand name or equal basis for a 3-year lease of dictating and transcribing equipment (D/T equipment). Among other things, the offers were evaluated on the basis of an option to purchase the leased equipment at the end of the lease term. The equipment was to be installed at the Walson Army Hospital (WAH).

The contracting officer determined that Dictaphone was the low offeror and awarded it the contract. National Office Equipment Company questioned the manner in which the Buy American Act differential was applied to the price of the equipment in a protest here. After re-evaluation of the offers, the Army found that Dictaphone was not the low offeror; and, consequently, the award to Dictaphone was improper.

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Given the improper award to Dictaphone and significant defects in the RFQ, we recommended that the contract with Dictaphone be terminated for the convenience of the Government. The RFQ was defective because it failed to contain either a desired or required delivery date, salient characteristics of the brand name equipment, or a common closing date for receipt of offers.

The Army requested permission to purchase the Dictaphone equipment as soon as funds became available. With regard to the Army's request, we stated in the decision, as follows:

"We do not believe that this should be done as a matter of course. Rather, we recommend that the procuring activity acquire the equipment in a manner which assures the least cost to the Government, consideration of all eligible firms, and continuity of service."

In urging modification of our recommendation, the Army states that WAH is a 9-story building located at Fort Dix. It took Dictaphone approximately 6 weeks to install the wired D/T system, which included the installation of over 7,000 feet of cable. If Dictaphone's lease is terminated, Dictaphone will remove all of its D/T equipment and perhaps its cable. Consequently, WAH will not have a D/T system until a replacement system is installed which is estimated to require 45 days.

The D/T system is considered essential to the operation of WAH. It is in constant use by the physicians. Any disruption of the system will have a far-reaching effect on patient care and the morale of the military community which depends on WAH for medical services. Moreover, there is no backup D/T system; any disruption of the central D/T system will seriously interfere with WAH's operations.

Inasmuch as GAO's recommendation recognized the need for continuity of service, the Army requests that our recommendation be modified so that the Army may purchase the Dictaphone system already installed under the purchase option provisions of the lease plan. The purchase of the Dictaphone D/T system will result in the least cost to the Government, since the Army will be credited with purchase option credits earned under the lease, i.e., part of the rental payments will be applied toward the purchase price; and WAH's D/T system, which is considered essential to the operations of the hospital, will not be interrupted. In summary, the Army contends that the purchase of the installed Dictaphone D/T system will be in the Government's best interest.

In response to the Army's request, vendors of D/T equipment assert that individual units of D/T equipment would be utilized by WAH during the period when the D/T system was being installed. This would result in minimal disruption of D/T services at WAH. The Army, on the other hand, contends that the use of individual units would be costly and inefficient. More specifically, the Army asserts that the use of individual units during the installation period would involve, inter alia, the following:

1. a costly short-term lease of individual D/T units,
2. special messenger service to move the cassettes to and from WAH's word processing center,
3. the loss or pilferage of cassette tapes because of the large number of tapes required,
4. time-consuming checking of tapes by physicians,
5. possible breaches of confidentiality of medical records requiring a more extensive interim security system.

In determining whether an improper award should be terminated for convenience (T/C), we have considered factors such as the seriousness of the procurement deficiency, the degree of prejudice to other bidders and offerors or the integrity of the competitive procurement system, the good faith of the parties, the extent of contract performance, the cost to the Government, the urgency of the procurement, and the impact on the procuring activity's mission. Datapoint Corporation, B-186979, May 18, 1977, 77-1 CPD 348.

To some extent, the Army's projection of the untoward consequences of utilizing individual D/T units during installation of another system after resolicitation, if Dictaphone is not successful, is speculation. In our opinion, the use of individual D/T units would at most produce a minor, short-term administrative inconvenience. We do not view this as sufficient reason to reverse our decision that the contract improperly awarded to Dictaphone be terminated.

In this regard, we also take cognizance of the fact that, on September 15, 1978, the Army issued a RFQ re-soliciting offers for D/T equipment for WAH. Approximately a month later, the Army canceled the RFQ. The RFQ made no provision for interim service during the installation period of the solicited D/T system. Further, the RFQ provided for delivery well past the September 30, 1978, expiration date of the then current term of Dictaphone's lease. This suggests that the D/T system at WAH can be temporarily interrupted without seriously detracting from patient health care, despite the Army's contentions to the contrary.

Moreover, the Army's assertion that the exercise of the purchase option will result in the least cost to the Government is also speculation. The only proper method of determining which prospective contractor offers the least cost to the Government is to compete

the procurement of the equipment in a manner consistent with our prior recommendation. Cf. Olivetti Corporation of America, B-187369, February 28, 1977, 77-1 CPD 146. In any event, given the possibility of some adverse effects if a new system is to be installed, and even if the implementation of our recommendation results in increased costs, we believe that it should be followed in order to preserve the integrity of the competitive procurement system. Datapoint Corporation, supra.

Based on the foregoing, we affirm our recommendation set forth in National Office Equipment Company, supra. A copy of this decision is being furnished to the congressional committees previously furnished copies of our original decision pursuant to section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 1176 (1970).

  
Deputy Comptroller General  
of the United States